IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 19100 of 1997

Between:

1 M.V.L. Narasimha (Died per LR), S/o Late M. Samanna,
H.No. 5-11-8, Sivalayam Street, Bheemunipatnam - 531 163
Visakhapatnam District.
2 Mukkamala Mahalakshmi W/o late M. Samanna,
H.No. 5-11-8, Sivalayam Street, Bheemunipatnam - 531 163
Visakhapatnam District.
(Petitioner No. 2 is brought on record as LR of deceased petitioner No.1 as per court order dt. 24/2/03 in WPMP 3970/03.)

..... PETITIONERS

AND

1 The Government of A.P. represented by its Secretary, Education Department, Secretariat Buildings, Hyderabad.
2 The Director of Higher Education, A.P. Hyderabad.
3 The Regional Joint Director of High Education, Rajahmundry, East Godavari District.
4 The Principal, Dr. V.S.Krishna Government College, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an Order, direction or a Writ particularly one in the nature of Writ of Mandamus declaring that the Judgment of the A.P.A.T. Hyderabad in R.P.No.2069 of 1989 and Review M.A.NO.319 of 1997 dated 4-7-1997 is arbitrary and illegal effecting the rights of the petitioner conferred under Article 14, 16 and 21 of the Constitution of

Indian and further declare that the petitioner is entitled to continue in service till 31-3-1998 the date on which he completes his age of 58 years and is entitled to terminal benefits on his retirement.

Counsel for the Petitioners: MR.KOKA RAGHAVA RAO

Counsel for the Respondent Nos.1 to 3: GP FOR HIGHER EDUCATION/G.P. FOR SERVICES-I.

Counsel for Respondent No.4: None appeared.

The Court made the following:

ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.2069 of 1989 and Review M.A.No.319 of 1997, dated 4.7.1997.

2. The matter ended in an unfortunate situation. One Mr.M.V.L.Narasimha was working as Senior Assistant in Dr.G.S.Krishna Government College, Visakhapatnam. He entered into service on 3.4.1961. While so, he resigned the service by issuing a letter dated 1.10.1985. The authorities, on 25.11.1985, accepted the said resignation. Challenging the acceptance of the resignation, he filed R.P.No.2069 of 1989 before the Tribunal and while admitting the said Representation Petition, the Tribunal granted interim stay, by virtue of which he continued in service. However, the said Representation Petition was finally dismissed on 6.9.1995. Thereafter he filed Review Petition and the Tribunal also dismissed the same. Against the said order, the present Writ Petition has been filed.

3. In the instant case while the Writ Petition is pending unfortunately the petitioner died on 11.11.2002. In view of this, the L.R. Petition was filed to bring the legal representatives on record and accordingly the prayer gets changed in view of the changed circumstances.

4. The learned counsel for the petitioner submits that the acceptance of resignation is illegal and contrary to law. Alternatively also he submits that the resignation ought to be treated as voluntary retirement under Rule 43 of A.P. Revised Pension Rules, 1980, (for short the Rules) and on account of ill-advice given to the employee, the legal representatives of the deceased-employee should not be allowed to suffer the consequences. When the deceased-

employee is entitled for pensionary benefits, the question of resignation would not arise. In any event even if such resignation is tendered, it has to be treated as voluntary retirement under Rule 43 of the Rules.

5. On the other hand the learned Government Pleader for Services-I submits that since the resignation was accepted and there is no procedural illegalities in accepting the resignation, it cannot be said that the orders of the Tribunal is illegal or contrary to law. He further submits that Rule 43 of the Rules applies only in cases of voluntary retirement, but in the instant case the petitioner did not seek voluntary retirement and he submitted his resignation, and therefore he is not entitled for any retirement benefits and in this regard the order of the Tribunal cannot suffer from any illegality or irregularity.

6. The factual scenario as seen is that the deceased-employee joined the service in 1961 and he submitted his resignation on 1.10.1985 and we do not find there is any illegality in the action of the authorities in accepting the resignation. But now the question that calls for consideration is whether his resignation can be converted as voluntary retirement more especially when he is no more.

7. Rule 43 of the Rules is very specific on this aspect, the employee who completes 20 years of qualifying service he is entitled to opt for voluntary retirement, subject to the condition he gives three months notice. Admittedly in the instant case the employee has resigned from service and he did not seek voluntary retirement under Rule 43 of the Rules. But keeping in view the employee is no more alive and the family will be put to starvation, if appropriate relief is not granted, we are inclined to consider the matter so as to save the family from the financial difficulties that would be faced consequent on his death. Therefore, keeping in view the peculiar facts and circumstances of this case, we direct that the resignation tendered by the employee on 1.10.1985 shall be treated as an application for voluntary retirement and he shall be entitled for all the benefits as stipulated under Rule 43 of the Rules as also the benefits which accrued to the family under Rule 50 of the Rules.

8. Accordingly the Writ Petition is disposed of directing the authorities to treat the resignation tendered by the deceased-employee on 1.10.1985 as application for voluntary retirement and the respondents are also directed to release the

pensionary benefits to the legal representatives of the deceased-employee with effect from 26.11.1985 and also family pension from 11.11.2002. The respondents shall, however, deduct three months pay in lieu of notice from the retirement benefits. The entire exercise shall be done within a period of three (03) months from the date of receipt of a copy of this order. However, we make it clear that this order shall not be treated as a precedent in other matters, as keeping in view the peculiar facts of this case the order has been made. No costs.

(G.BIKSHAPATHY, J.)

1st April, 2005.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Education Department, Government of A.P.
Secretariat Buildings, Hyderabad.
2 The Director of Higher Education, A.P. Hyderabad.
3 The Regional Joint Director of High Education,
Rajahmundry, East Godavari District.
4 The Principal, Dr. V.S.Krishna Government College,
Visakhapatnam.

5 The Registrar, A.P. Administrative Tribunal, Hyderabad.

6 2 CCs to G.P. for Higher Education, High Court of A.P. Hyderabad (OUT)

7 2 CD copies

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